
IN THE
United States
Circuit Court of Appeals
For the Ninth Circuit

BOISE - PAYETTE LUMBER COMPANY, a
Corporation,
Appellant,
VS.
HALLORAN - JUDGE TRUST COMPANY, a
Corporation, as Trustee,
Appellee.

Brief of Appellant

On Appeal from the United States District Court,
District of Idaho, Eastern Division
HON. F. S. DEITRICH, Judge

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This cause comes before the Court upon an agreed statement under equity rule No. 77, from which it is established that the Halloran-Judge Trust Company, the original plaintiff in the action, was a mortgagee of certain properties belonging to the Pingree Land Company, whose predecessor in interest was the Owsley Carey Land & Irrigation Com-

first portion of the clause affecting the time when the lien attaches and its priority, namely, "when the building, improvement or structure was commenced," then it could very properly be said that the claim of the Boise-Payette Lumber Company relates back to December 30th, 1919, the time when the work was commenced. If we have regard for the latter portion of the same clause, however, viz: "or materials were commenced to be furnished," then the claim of lien of the Boise-Payette Lumber Company would relate back to the first day of April, 1920, when the materials were commenced to be furnished.

We believe that a proper interpretation of the statute should be based upon its relation to those who contract directly with the owner of the structure, namely, with original contractors whose claim of lien relates back to the time when they, themselves, actually began their work or the furnishing of material. Respecting subcontractors, we believe that their claim of lien relates back not to the time that they did their work, or furnished their materials, but to the time when the improvement or structure was commenced.

We believe that the foregoing construction of the statute is sustained by the courts of California, which, in the case of McClain vs. Hutton, 131 Cal. 132, 61 Pac. 273, have passed directly upon this proposition. We also believe that the rule is properly stated in Bloom on Mechanics' Liens, in Section 488 and 489, at pages 448 and 449, as follows:

“Under this provision of Section 1186 (corresponding to 7345 of the Compiled Statutes of the State of Idaho), the cases must be divided into two categories distinguished by the existence or non-existence of a valid original contract. In the former case, the priority of the liens is to be determined by the date of the commencement of the building; in the latter, by the time the work was done or the materials were commenced to be furnished.”

The California cases are based upon this proposition, that the statute required the recording of the entire building contract, including the plans and specifications, and in case it was not recorded made the contract void in so far as liens are concerned. Subcontractors, under such an original contract, which had not been properly recorded, could not claim a lien as of the date the building commenced, but only as of the date they, themselves, began work or began furnishing material, on the ground that the original contract was void, and being void, the courts indulged the fiction of a contract between the materialman or mechanics and the owner of the building sufficient at least to support a lien although not sufficient to support a personal judgment against the owner. The California courts make the distinction, however, that if the original contract was not void, then the rights of subcontractors related back to the time the building or structure was commenced.

In the case at bar, it is admitted that Fred A. Wilkie had a valid contract with the owner of the

land, and that the Boise-Payette Lumber Company furnished material to him as such original contractor, and we submit that the rule of the California decisions would therefore apply, and the rights of the Boise-Payette Lumber Company would relate back to the time Fred A. Wilkie commenced the work, namely, December 30th, 1919, and would thus be superior to the claims of the plaintiff.

Reason and logic support this view of the matter as otherwise an original contractor has no means of protecting himself. Unless he can employ subcontractors and purchase material with the understanding that the subcontractors and materialmen have a valid right to a lien superior to any mortgages attaching subsequent to the beginning of the work by the original contractor, then the original contractor is denied a line of credit which would render operations by him futile. He, himself, is personally liable to all his subcontractors and the materialmen from which he purchases material, and he is protected as against his own liability by the right to assert a lien against the property.

Respectfully submitted,

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Boise-Payette Lumber Company.